IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

MARTY HANDY WORD,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 00-205-SLR
	)	
C/O ROBERT PROCTOR, WARDEN	)	
RAFAEL WILLIAMS, and	)	
COMMISSIONER STANLEY TAYLOR,	)	
	)	
Defendants.	)	

MEMORANDUM ORDER

Plaintiff Marty Word, SBI# 218647, is a pro se litigant. At the time he filed this complaint, plaintiff was incarcerated at the Multi-Purpose Criminal Justice Facility ("MPCJF") located in Wilmington, Delaware. Plaintiff filed this action pursuant to 42 U.S.C. § 1983 and requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915.

I. STANDARD OF REVIEW

The court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331. Reviewing complaints filed pursuant to 28 U.S.C. § 1915 is a two-step process. First, the court must determine whether plaintiff is eligible for pauper status. On March 21, 2000, the court granted plaintiff leave to proceed in forma pauperis and ordered him to pay $36.50 as an initial partial filing fee. Plaintiff paid $20.18 on April 24, 2000.

Once the pauper determination is made, the court must then determine whether the action is frivolous, malicious, fails to state a claim upon which relief may be granted or seeks monetary relief from a defendant immune from such relief pursuant to 28 U.S.C. §§ 1915(e)(2)(B)-1915A(b)(1).[1] If the court finds plaintiff's complaint falls under any of the exclusions listed in the statutes, then the court must dismiss the complaint.

When reviewing complaints pursuant to 28 U.S.C. §§ 1915(e)(2)(B)-1915A(b)(1), the court must apply the standard of review set forth in Fed. R. Civ. P. 12(b)(6). See Neal v. Pennsylvania Bd. of Probation and Parole, No. 96-7923, 1997 WL 338838 (E.D. Pa. June 19, 1997)(applying Rule 12(b)(6) standard as appropriate standard for dismissing claim under § 1915A). Accordingly, the court must "accept as true the factual allegations in the complaint and all reasonable inferences that can be drawn therefrom." Nami v. Fauver, 82 F.3d 63, 65 (3d Cir. 1996). Pro se complaints are held to "less stringent standards than formal pleadings drafted by lawyers and can only be dismissed for failure to state a claim if it appears

[1] These two statutes work in conjunction. Section 1915(e)(2)(B) authorizes the court to dismiss an in forma pauperis complaint at any time, if the court finds the complaint is frivolous, malicious, fails to state a claim upon which relief may be granted or seeks monetary relief from a defendant immune from such relief. Section 1915A(a) requires the court to screen prisoner complaints seeking redress from governmental entities, officers or employees before docketing, if feasible and to dismiss those complaints falling under the categories listed in § 1915A(b)(1).

'beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.'" Estelle v. Gamble, 429 U.S. 97, 106 (1976)(quoting Conley v. Gibson, 355 U.S. 41, 45-46 (1957)).

The standard for determining whether an action is frivolous is well established. The Supreme Court has explained that a complaint is frivolous "where it lacks an arguable basis either in law or in fact." Neitzke v. Williams, 490 U.S. 319, 325 (1989).[2] As discussed below, plaintiff's claims have no arguable basis in law or in fact, and shall be dismissed as frivolous pursuant to 28 U.S.C. §§ 1915(e)(2)(B)-1915A(b)(1).

II. DISCUSSION

A. The Complaint

Plaintiff alleges that defendant Proctor harasses him, by calling him names. Specifically, plaintiff alleges, "I have been sexually harassed and harassed by C/O Proctor over speaker phone every morning Monday through Friday 8AM-4PM about my lifestyle." (D.I. 2 at 3) Plaintiff has not raised any specific allegations regarding defendants Williams and Taylor. Rather, plaintiff indicates that he

[2] Neitzke applied § 1915(d) prior to the enactment of the Prisoner Litigation Reform Act of 1995 (PLRA). Section 1915 (e)(2)(B) is the re-designation of the former § 1915(d) under the PLRA. Therefore, cases addressing the meaning of frivolousness under the prior section remain applicable. See § 804 of the PLRA, Pub.L.No. 14-134, 110 Stat. 1321 (April 26, 1996).

has named defendants Williams and Taylor due to their positions as Warden of the MPCJF and as Commissioner of the Department of Correction. (Id. at 2) Plaintiff states that he "would like to sue the State Department of Corrections" but does not request specific relief. (Id. at 4) The court construes his request as one for damages and/or injunctive relief.

B. Analysis

1. Plaintiff's Claim Against Defendant Proctor

To state a claim under 42 U.S.C. § 1983, plaintiff must allege "the violation of a right secured by the Constitution or laws of the United States and must show that the alleged deprivation was committed by a person acting under color of state law." West v. Atkins, 487 U.S. 42, 48 (1988) (citing Parratt v. Taylor, 451 U.S. 527, 535 (1981) (overruled in part on other grounds Daniels v. Williams, 474 U.S. 327, 330-31 (1986)). However unprofessional defendant Procotor's behavior towards plaintiff might have been, verbal harassment and abuse fail to state a claim cognizable under 42 U.S.C. § 1983. See McFadden v. Lucas, 713 F.2d 143, 146 (5th Cir. 1983). This is true even if a prisoner is called an obscene name. See Ellingburg v. Lucas, 518 F.2d 1196, 1197 (8th Cir. 1975). See also Collins v. Cundy, 603 F.2d 825, 827 (10th

Cir. 1979)(verbal harassment or abuse not sufficient to state a claim under § 1983); Jamison v. Roehlk, No. C94-20631-RMW, 1995 WL 380101 *4 (N.D. Cal. Jun. 21, 1995)(allegations of harassment, embarrassment and defamation are not cognizable under § 1983); Yelverton v. Sherman, No. 87-0294, 1990 WL 1880736 (E.D. Pa. Feb. 27, 1990)(prisoner does not have a protected interest in being free from verbal harassment). Plaintiff's claim against defendant Procter has no arguable basis in law. Therefore, plaintiff's claim against defendant Procter is frivolous and shall be dismissed pursuant to 28 U.S.C. §§ 1915(e)(2)(B)-1915A(b)(1).

2. Vicarious Liability

Plaintiff has named Raphael Williams and Stan Taylor as defendants. However, plaintiff has not raised any specific allegations regarding either defendant. Rather, plaintiff has indicated that Raphael Williams is the Warden at MPCJF and Stan Taylor is the Commissioner of the Department of Correction. (D.I. 2 at 3) Therefore, it appears that plaintiff is attempting to hold these defendants vicariously liable for the actions of defendant Proctor.

Supervisory liability cannot be imposed under § 1983 on a respondeat superior theory. See Monell v. Department of Social Services of City of New York, 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362 (1976). In order for a supervisory public official to be held liable for a subordinate's constitutional

tort, the official must either be the "moving force [behind] the constitutional violation" or exhibit "deliberate indifference to the plight of the person deprived." Sample v. Diecks, 885 F.2d 1099, 1118 (3d Cir. 1989) (citing City of Canton v. Harris, 489 U.S. 378, 389 (1989)).

Nothing in the complaint indicates that either defendant Williams or Taylor were the "driving force [behind]" defendant Proctor's actions, or that they were even aware of plaintiff's allegations and remained "deliberately indifferent" to his plight. Sample v. Diecks, 885 F.2d at 1118. Consequently, plaintiff's claim against defendants Williams and Taylor has no arguable basis in law or in fact. Therefore, plaintiff's claim against defendants Williams and Taylor is frivolous and shall be dismissed pursuant to 28 U.S.C. §§ 1915(e)(2)(B)-1915A(b)(1).

NOW THEREFORE, IT IS HEREBY ORDERED this 31st day of March 2003, that:

1. Plaintiff's complaint is dismissed as frivolous pursuant 28 U.S.C. §§ 1915(e)(2)(B)-1915A(b)(1).

3. The clerk shall mail a copy of the court's Memorandum Order to plaintiff.

Sue L. Robinson
United States District Judge